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11

12   UNITED STATES DISTRICT COURT
                  CENTRAL DISTRICT OF CALIFORNIA
13
                                         CV11 03710 JFW VBKx
   CARDIAC SCIENCE CORPORATION,
14   Civil File No. 03710
                    Plaintiff,
15   **(JURY TRIAL DEMANDED)**

16 v.

17 LIFECOR, INC., and
   ZOLL MEDICAL CORPORATION,
18
                    Defendants.
19

20   **PLAINTIFF'S COMPLAINT FOR BREACH OF CONTRACT
              AND DECLARATORY JUDGMENT**
21
           Plaintiff Cardiac Science Corporation, by its attorneys, brings this Complaint against
22
   Defendants LifeCor, Inc. and ZOLL Medical Corporation (hereinafter collectively referred to as
23
   "Defendants"), and hereby states and alleges as follows:
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25

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27   1

   Plaintiff's Complaint for Breach of
28 Contract and Declaratory Judgment

PARTIES

1.   Plaintiff Cardiac Science Corporation ("Cardiac Science") is a Delaware corporation with its corporate headquarters and principal place of business in Bothell, Washington. Cardiac Science Corporation is a successor to Cardiac Science, Inc. Cardiac Science maintains a corporate office in Irvine, California, in the Central District.

2.   Defendant LifeCor, Inc. ("LifeCor") is a Pennsylvania corporation with its corporate headquarters and principal place of business in Pittsburgh, Pennsylvania.

3.   Defendant ZOLL Medical Corporation ("ZOLL Medical") is a Massachusetts corporation with its corporate headquarters and principal place of business in Chelmsford, Massachusetts.

JURISDICTION AND VENUE

4.   This Court has subject matter jurisdiction based on 28 U.S.C. § 1332, as there is diversity between the parties to the claims asserted in Cardiac Science's Complaint, and Cardiac Science's claims against Defendants exceed $75,000, exclusive of interests and costs. This Court has subject matter jurisdiction in accordance with 28 U.S.C. §§ 2201 and 2202 with respect to Cardiac Science's declaratory judgment claims.

5.   Upon information and belief, Defendants have and do conduct business in this District, and are subject to personal jurisdiction pursuant to Cal. Code of Civ. Pro. § 410.10. In an agreement dated November 12, 2002 ("Cross-License Agreement"), LifeCor also consented and agreed that jurisdiction for proceedings relating to the Cross-License Agreement would lie "exclusively" with the appropriate (state and/or) federal court in Los Angeles County. ZOLL Medical is also bound to that consent and agreement to this Court's exclusive jurisdiction because ZOLL Medical is a successor and/or assign to the Cross-License Agreement.

Plaintiff's Complaint for Breach of
Contract and Declaratory Judgment

6.   Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(a) and (c) as Defendants are subject to personal jurisdiction and do business in this District. In the Cross-License Agreement dated November 12, 2002, LifeCor consented and agreed that venue for proceedings relating to the Cross-License Agreement would lie "exclusively" with the appropriate (state and/or) federal court in Los Angeles County. ZOLL Medical is also bound to that consent and agreement to exclusive venue in this Court because ZOLL Medical is a successor and/or assign to the Cross-License Agreement.

FACTS COMMON TO ALL CLAIMS

7.   Cardiac Science restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 6.

8.   Cardiac Science and LifeCor entered into a written agreement entitled "Cross-License Agreement" that had the effective date of November 12, 2002.

9.   According to Section 8.1, the term of the Cross-License Agreement was for 12 years, commencing on the effective date of November 12, 2002. The Cross-License Agreement still remains in effect and has not been terminated.

10.   Pursuant the terms of the Cross-License Agreement, Cardiac Science granted to LifeCor a license to a number of Cardiac Science's patents, patent applications, proprietary RHYTHMx® software, software derivatives and the RHYTHMx® trademark, within the field of wearable, external, automatic defibrillators intended for ambulatory patient applications.

11.   LifeCor was not allowed to sublicense Cardiac Science's patents and patent applications, as the license was "non-sublicensable" according to Section 2.1.

12.   Section 4.1 required that LifeCor pay Cardiac Science (a) a lump-sum fee and (b) a separate per-unit royalty for each wearable, external, automatic defibrillator product or device

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1 intended for ambulatory patient applications, whether or not it practiced, embodied,

2 incorporated, or was manufactured by or with the use of Cardiac Science's patents or software.

3   13.   Section 2.8 included covenants not to sue between Cardiac Science and LifeCor,

4 and Section 2.9 contained alternative dispute resolution provisions in the event that a patent

5 infringement issue arose between Cardiac Science and LifeCor.

6   14.   Also pursuant to the terms of the Cross-License Agreement, LifeCor granted to

7 Cardiac Science a license to a number of LifeCor's patents and patent applications within the

8 field of wearable, external, automatic defibrillators intended for ambulatory patient applications.

9

10   15.   Two of the patents that LifeCor licensed to Cardiac Science in the Cross-License

11 Agreement were U.S. Patent No. 5,929,601 and U.S. Patent No. 6,169,387.

12   16.   On or about April 10, 2006, ZOLL Medical acquired substantially all of LifeCor's

13 assets and assumed LifeCor's liabilities.

14   17.   Included in that asset transfer were LifeCor's U.S. Patent No. 5,929,601 and U.S.

15 Patent No. 6,169,387.

16

17   18.   ZOLL Medical currently owns U.S. Patent No. 5,929,601 and U.S. Patent No.

18 6,169,387.

19   19.   Cardiac Science still has a license to U.S. Patent No. 5,929,601 and U.S. Patent

20 No. 6,169,387 pursuant to the terms of the Cross-License Agreement. ZOLL Medical is the

21 licensor to Cardiac Science of these two patents.

22   20.   LifeCor is currently a subsidiary of ZOLL Medical.

23   21.   LifeCor and ZOLL Medical share offices at 121 Gamma Drive, Pittsburgh,

24

25 Pennsylvania.

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27   4

28 Plaintiff's Complaint for Breach of
Contract and Declaratory Judgment

22.   LifeCor and ZOLL Medical share offices at 121 Freeport Road, Pittsburgh, Pennsylvania.

23.   Marshal W. Linder was the Chief Operating Officer of LifeCor when the Cross-License Agreement was signed.

24.   Marshal W. Linder is currently a corporate executive for LifeCor.

25.   As of April 27, 2011, LifeCor was an active corporation in the state of Pennsylvania, and has not been dissolved.

26.   On April 10, 2006, through its acquisition of LifeCor, ZOLL Medical became a successor to LifeCor's wearable, external, automatic defibrillator business. ZOLL has operated the LifeCor business through its ZOLL LifeCor subsidiary.

27.   Upon information and belief, LifeCor continues to sell, license, lease, distribute, and/or otherwise transfer wearable, external, automatic defibrillator products.

28.   Upon information and belief, ZOLL Medical has and continues to sell, license, lease, distribute, and/or otherwise transfer wearable, external, automatic defibrillator products, including the LifeVest® products previously and/or contemporaneously sold, licensed, leased, distributed, and/or otherwise transferred by LifeCor.

<div align="center">

COUNT I
BREACH OF CONTRACT

</div>

29.   Cardiac Science restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 28.

30.   Cardiac Science and LifeCor are parties to the Cross-License Agreement.

31.   ZOLL Medical is an assign and/or successor to the Cross-License Agreement based upon ZOLL Medical's acquisition of LifeCor.

Plaintiff's Complaint for Breach of
Contract and Declaratory Judgment

32.   Upon information and belief, Defendants continue to sell, license, lease, distribute, and/or otherwise transfer wearable, external, automatic defibrillator products.

33.   Cardiac Science has continued to provide a license and otherwise abide by the terms of the Cross-License Agreement.

34.   Defendants have refused to pay Cardiac Science as required in Article 4 and Exhibit D to the Cross-License Agreement.

35.   As a direct result of Defendants' breaches of the Cross-License Agreement, Cardiac Science has been damaged in amounts exceeding $500,000.

36.   Cardiac Science has demanded an audit from Defendants pursuant to Section 4.5 of the Cross-License Agreement.

37.   Defendants have refused to allow Cardiac Science to exercise its audit rights.

38.   Cardiac Science seeks its out-of-pocket expenses, including its attorney's fees and costs related to this action, incurred in connection with performing an audit of Defendants' books.

39.   Pursuant to Section 4.2, Cardiac Science also seeks interest owed on any and all late payments by Defendants.

COUNT II
DECLARATORY JUDGMENT OF NO TERMINATION

40.   Cardiac Science restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 39.

41.   There is an actual controversy between the parties with regard to LifeCor's contention that it properly and effective terminated certain terms of the Cross-License Agreement.

6

Plaintiff's Complaint for Breach of
Contract and Declaratory Judgment

42.   Cardiac Science seeks a declaration for the Court that neither LifeCor nor ZOLL Medical effectively and properly terminated the Cross-License Agreement, particularly the obligation to pay Cardiac Science pursuant to Article 4.

COUNT III
DECLARATORY JUDGMENT THAT ZOLL MEDICAL IS A SUCCESSOR AND/OR ASSIGN TO THE CROSS-LICENSE AGREEMENT

43.   Cardiac Science restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 42.

44.   There is an actual controversy between the parties with regard to ZOLL Medical's contention that it is not bound to the terms of the Cross-License Agreement.

45.   Cardiac Science seeks a declaration for the Court that ZOLL Medical is a successor and/or assign to the Cross-License Agreement and is bound by its terms.

JURY DEMAND

46.   Pursuant to FED. R. CIV. P. 38(b), Cardiac Science requests a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cardiac Science Corporation respectfully requests that this Court:

(a)   Enter judgment holding that Defendants, and each of them, breached the Cross-License Agreement, Defendants be enjoined from any further breaches, and Cardiac Science is entitled to damages in excess of $500,000, along with interest payments allowed by the Cross-License Agreement or otherwise by law;

(b)   Enter judgment holding that neither LifeCor nor ZOLL Medical legitimately or properly terminated the Cross-License Agreement;

7

1   (c)   Enter judgment holding that ZOLL Medical is a successor and/or assign to the

2   Cross-License Agreement and is bound by its terms;

3   (d)   Grant Cardiac Science its costs in addition to its attorneys' fees, in accordance

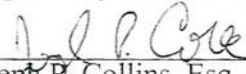4   with Section 4.5 of the Cross-License Agreement, and otherwise according to law;

5   (e)   Grant Cardiac Science damages of pre-judgment and post-judgment interest on its

6   damages as allowed by law; and

7   (f)   Grant Cardiac Science such other relief as the Court may deem just and equitable.

8

9   Respectfully submitted,

10   Dated: April 29, 2011   By: _____
                                  Joseph P. Collins, Esq. (SBN 163442)

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                                  Santa Monica, CA 90401

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20

21   **ATTORNEYS FOR PLAINTIFF**

22   890590

23

24

25

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27   8

28   Plaintiff's Complaint for Breach of
Contract and Declaratory Judgment

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge John F. Walter and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV11- 3710 JFW (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] Western Division	[ ] Southern Division	[ ] Eastern Division
312 N. Spring St., Rm. G-8	411 West Fourth St., Rm. 1-053	3470 Twelfth St., Rm. 134
Los Angeles, CA 90012	Santa Ana, CA 92701-4516	Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

CV-18 (03/06)   NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

	CASE NUMBER
CARDIAC SCIENCE CORPORATION,	
PLAINTIFF(S)	**CV11 03710 JFW VBKx**
v.	
LIFECOR, INC., and ZOLL MEDICAL CORPORATION	**SUMMONS**
DEFENDANT(S).	

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within __21__ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Joseph P. Collins _____, whose address is 1541 Ocean Ave., #200, Santa Monica, CA 90401 _____. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

                                        Clerk, U.S. District Court

                                        CHRISTOPHER POWERS

Dated: ___APR 2 9 2011___   By: _____

                                        Deputy Clerk

                                        (Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

CARDIAC SCIENCE CORPORATION

DEFENDANTS

LIFECOR, INC. and ZOLL MEDICAL CORPORATION

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Joseph P. Collins, 1541 Ocean Ave., #200, Santa Monica, CA 90401;
Tel: 310-424-1466

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question (U.S. Government Not a Party)

☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☒ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding   ☐ 2 Removed from State Court   ☐ 3 Remanded from Appellate Court   ☐ 4 Reinstated or Reopened   ☐ 5 Transferred from another district (specify):   ☐ 6 Multi-District Litigation   ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes   ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes   ☒ No   ☐ **MONEY DEMANDED IN COMPLAINT: $** > $500,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. Section 1332

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
☐ 400 State Reapportionment	☐ 110 Insurance	☐ 310 Airplane	☐ 370 Other Fraud	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 710 Fair Labor Standards Act
☐ 410 Antitrust	☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 371 Truth in Lending	☐ 530 General	☐ 720 Labor/Mgmt. Relations
☐ 430 Banks and Banking	☐ 130 Miller Act	☐ 320 Assault, Libel & Slander	☐ 380 Other Personal Property Damage	☐ 535 Death Penalty	☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 450 Commerce/ICC Rates/etc.	☐ 140 Negotiable Instrument	☐ 330 Fed. Employers' Liability	☐ 385 Property Damage Product Liability	☐ 540 Mandamus/ Other	
☐ 460 Deportation	☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine	**BANKRUPTCY**	☐ 550 Civil Rights	☐ 740 Railway Labor Act
☐ 470 Racketeer Influenced and Corrupt Organizations	☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 422 Appeal 28 USC 158	☐ 555 Prison Condition	☐ 790 Other Labor Litigation
☐ 480 Consumer Credit	☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)	☐ 350 Motor Vehicle	☐ 423 Withdrawal 28 USC 157	**FORFEITURE / PENALTY**	☐ 791 Empl. Ret. Inc. Security Act
☐ 490 Cable/Sat TV		☐ 355 Motor Vehicle Product Liability	**CIVIL RIGHTS**	☐ 610 Agriculture	**PROPERTY RIGHTS**
☐ 810 Selective Service	☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 360 Other Personal Injury	☐ 441 Voting	☐ 620 Other Food & Drug	☐ 820 Copyrights
☐ 850 Securities/Commodities/ Exchange		☐ 362 Personal Injury- Med Malpractice	☐ 442 Employment	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 830 Patent
☐ 875 Customer Challenge 12 USC 3410	☐ 160 Stockholders' Suits	☐ 365 Personal Injury- Product Liability	☐ 443 Housing/Acco- mmodations		☐ 840 Trademark
	☒ 190 Other Contract		☐ 444 Welfare		**SOCIAL SECURITY**
☐ 890 Other Statutory Actions	☐ 195 Contract Product Liability	☐ 368 Asbestos Personal Injury Product Liability	☐ 445 American with Disabilities - Employment	☐ 630 Liquor Laws	☐ 861 HIA (1395ff)
☐ 891 Agricultural Act	☐ 196 Franchise	**IMMIGRATION**	☐ 446 American with Disabilities - Other	☐ 640 R.R. & Truck	☐ 862 Black Lung (923)
☐ 892 Economic Stabilization Act	**REAL PROPERTY**	☐ 462 Naturalization Application	☐ 440 Other Civil Rights	☐ 650 Airline Regs	☐ 863 DIWC/DIWW (405(g))
☐ 893 Environmental Matters	☐ 210 Land Condemnation	☐ 463 Habeas Corpus- Alien Detainee		☐ 660 Occupational Safety /Health	☐ 864 SSID Title XVI
☐ 894 Energy Allocation Act	☐ 220 Foreclosure	☐ 465 Other Immigration Actions		☐ 690 Other	☐ 865 RSI (405(g))
☐ 895 Freedom of Info. Act	☐ 230 Rent Lease & Ejectment				**FEDERAL TAX SUITS**
☐ 900 Appeal of Fee Determi- nation Under Equal Access to Justice	☐ 240 Torts to Land				☐ 870 Taxes (U.S. Plaintiff or Defendant)
	☐ 245 Tort Product Liability				☐ 871 IRS-Third Party 26 USC 7609
☐ 950 Constitutionality of State Statutes	☐ 290 All Other Real Property				

CV11 03710

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

CV-71 (05/08)   CIVIL COVER SHEET   Page 1 of 2

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)   ☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, _and_ one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐   Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐   Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Massachusetts (ZOLL) Pennsylvania (LIFECOR)

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
   Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Pennsylvania

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____   Date April 29, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

CV-71 (05/08)   CIVIL COVER SHEET   Page 2 of 2